

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

TOMMY LEE JOHNSON-EL

:

Plaintiff

:

v.

:

Civil Action No. AW-07-1943

STATE OF MARYLAND

:

and JUDGE ALLEN L. SCHWAIT

:

Defendants

oOo

MEMORANDUM

The above-captioned civil rights case was filed on July 23, 2007, together with a Motion to Proceed in Forma Pauperis. Because he appears to be indigent, Plaintiff's motion will be granted. For the reasons that follow, the complaint must be dismissed.

Plaintiff asserts that he has been denied proper credit for time served pre-trial and for a period of time following sentencing. Paper No. 1 at p. 4. He claims he is entitled to the credits under Maryland law. *Id.* He seeks monetary damages for each day he has been confined illegally beyond his release date. *Id.*

Any claim against Judge Schwait with respect to credits for time spent incarcerated is barred by the doctrine of judicial immunity. *See Forrester v. White*, 484 U.S. 219, 226– 27 (1988) (“If judges were personally liable for erroneous decisions, the resulting avalanche of suits, most of them frivolous but vexatious, would provide powerful incentives for judges to avoid rendering decisions likely to provoke such suits.”). The complaint as to Judge Schwait must be dismissed.

The remaining claim against the State of Maryland, is a claim for damages that impugns a currently valid criminal conviction. Such a claim is barred by the holding in *Heck v. Humphrey*, 512 U.S. 477, 487 (1994). To the extent that Plaintiff is in fact entitled to the credits specified and he is currently illegally confined in the Maryland Division of Correction, he has a state remedy available.¹ In the event he avails himself of available state remedies, establishes that he is entitled to the credits but was deprived of those credits as a result of a constitutional rights violation, he may re-file the instant claim for damages.

A separate order follows.

Date: August 2, 2007

/s/

Alexander Williams, Jr.
United States District Judge

¹ See Md. Rule 15-301 *et seq.* (rules governing petitions for writ of habeas corpus) and Md. Cts & Jud. Proc., Code Ann., §§ 3-701 *et seq.*